IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 696 OF 1988

The State of Maharashtra.
....Appellant.

Vs.

Dinkar Balkrishna Palande,
Age 36 years, r/o. Prabhanvali,
Taluka Lanje, Dist. Ratnagiri.

....Respondent.

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Mrs. V.R. Bhosale, APP. for the State of Maharashtra.

Miss Savita Suryawanshi, Advocate appointed for the Respondent.

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CORAM: S.S.PARKAR &
R.S.MOHITE, JJ.

DATED: 12TH AUGUST,2004

ORAL JUDGMENT: (PER R.S. MOHITE, J.)

1. This is an appeal filed by the State seeking to quash and set aside the Judgment and Order passed by the Sessions Judge, Ratnagiri on 28.4.1988 in Sessions Case No.11 of 1987, acquitting the respondent (hereinafter referred to as "accused") of the charge under Section 302 of the Indian Penal Code.

2. The prosecution case is as under:

a) The accused was married with the deceased Vidya @ Sarojini. They were residing at Village Prabhanvali. That, the accused was running a flour mill at Village Khor Ninko. In addition to the business of running flour mill he was doing the business of making Ganpati idols during the Ganpati festival. The flour mill of the accused was close to the house of P.W.No.3-Satyawati. The incident in question took place on 27.9.1986 at about 1.00p.m. On this day the deceased Vidya came to the house of Satyawati with a tiffin which she was carrying to give to her husband. Satyawati then told her that accused had not consumed his tiffin on the earlier day. The accused was present there. Vidya asked the accused as to why he had not consumed his food. Accused did not give any proper reply and abused Vidya. Vidya also asked accused for some money for household expenses. Accused then took Vidya near the flour mill under the pretext of giving money to her. On that day the flour mill was not working and therefore, except Vidya and the accused nobody was present in the flour mill.

After some time P.W.No.3 Satyawati heard Vidya calling out for her loudly. P.W.No.3 Satyawati rushed towards the flour mill. She was accompanied by her brother-in-law Atmaram Powar. She noticed that Vidya was lying in the flour mill and had sustained injury on her head. The accused was seen in an angry mood with one hand up. P.W.No.3 Satyawati requested him not to beat Vidya. Her brother-in-law P.W.No.4-Atmaram Power brought some water and sprinkled the same on her face and they took Vidya to her own house. P.W.No.3 Satyawati then asked Vidya as to what was wrong with her and she told that she was beaten by her husband. That, after taking rest for some time Vidya got up and went to her home. She refused the escort of P.W.No.4 Atmaram Powar. P.W.No.3-Satyawati thereafter took her cattles for grazing and returned at about 6.30p.m. While she was busy in her household work, two persons from Prabhanwali Village came to her residence enquiring about the accused. The accused had then come to the house of P.W.No.3-Satyawati. At that time these persons told the accused that his wife Vidya was not well and he should accompany them to Prabhanwali. Accused refused to accompany them. Again after 9.30p.m. the Sarpanch and other 5-6 persons from Village Prabhanwali came to the house of P.W.No.3

Satyawati. The name of the Sarpanch was Ramesh Phansalkar. He made an enquiry about the whereabouts of the accused. After some time the accused came to the residence of P.W.No.3 Satyawati. Satyawati then asked him whether he had beaten his wife. The Sarpanch told him that he had come to take him to Prabhanwali but the accused did not go alongwith Sarpanch.

b) P.W.No.5 Sumati Mane was the mother of the deceased. She stated in her evidence that one Sharad Powar told her that she had been called by his daughter immediately. She immediately went to the house of her daughter. She saw that her daughter was shivering. It was 4.p.m. when she reached the house of her daughter. At that time she saw that one Dr.Kalantre from Prabhanwali was treating her daughter. The said doctor was injecting some injections into her daughter. He was there for about half an hour and three injections were given by the said doctor. Within a short time Vidya started shivering. While Vidya was shivering her husband and son arrived there but within a short time Vidya expired.

c) P.W.No.2-Madhav Mane was the father of the

deceased and was a resident of Village Prabhanwali. His house was situated only about 50-paces from the house where the accused and deceased were residing,. He states that on 27.9.1986 when he returned home in the evening after finishing his day's work, he learnt that the deceased was not feeling well. He therefore, went to the house of his daughter. He found that his daughter was unconscious. She died on the same day at about 6.30p.m. He then went to the shop of the Police Patil for giving information about the death of his daughter. Then, Sarpanch, Police Patil, cousin of this witness and this witness proceeded to the house of Vidya. P.W.No.2 Madhav Mane felt that the death of his daughter was suspicious and therefore, he went to the police station and filed a complaint (Exh.12).

d) The dead body of Vidya was taken to the Primary Health Centre at Bhambad. There post mortem on the dead body was performed by P.W.No.1 Dr. M.L. Jalisatgi. He found the following injuries :

1. CLW 2cm. x1 cm. x scalp deep, situated obliquely over left parital region. 4cm. in front of left parital eminence, directed from above downwards and forwards.

On dissection subcutaneous tissues were ecchymosed borders irregular, reddish in colour. Aforesaid injury was antemortem.

2. There were 5 contusions (i) 5-cm. 1x1/2 cm. situated obliquely over RT. 7th rib, directed from above downwards and forward, (ii) 4-contusions situated one below the other. 2 cm. below the above injury directed similarly bluish greenish in colour. On dissection subcutaneous tissues i.e. superficial fascia was ecchymosed. The aforesaid injuries were antemortem.

On internal examination he found that there was no fracture of the skull. On opening the skull he found that meninges were found to be congested. On examination of the brain, blood clots were seen in the left lateral ventricle of the brain. Flax cerebra were congested and blood clots were found on the pons and medulla. The cause of death was due to cardio respiratory failure secondary to medulla pontine and ventricular (left lateral) haemorrhage possibly due to ante mortem head injury. In the court the doctor was

examined and he proved the Post mortem notes. In his cross examination he admitted that pons and medulla did not fall in two parital regions. That in the present case, there was no internal injury corresponding to the external injury on the head. That, the death of the deceased was caused due to asphyxia. He further admitted that the wound found on the head of the deceased could be accidental or suicidal. That, the said injury could be caused due to a fall. He stated that the injury on the head was basically a simple injury. He admitted that if the death is due to asphyxia caused by a drug reaction then one can except the presence of haemorrhage on modulla and pons. That in the case of cardiac arrest also, blood clots could be found in the brain.

e) P.W.No.8 Vilas Laxman Bhosale was at the relevant time P.S.I. attached to Lanja Police Station. He registered the offence on the basis of the F.I.R. Exh.12. He went to the spot where the dead body of Vidya was lying and prepared the inquest panchanama. He sent the dead body for autopsy. He also prepared a scene of offence panchanama and recorded the statements of various witnesses. After completion of the investigation, he sent articles to Chemical Analyser

alongwith a covering letter. On receipt of the C.A. report, Post mortem notes and after recording the statements of the witnesses he filed charge-sheet in the court of Chief Judicial Magistrate, Ratnagiri on 31.10.1986.

3. After the case was committed to the Court of Sessions, the Trial Court framed a charge under Section 302 of the Indian Penal Code. The prosecution examined in all eight witnesses to bring home the charge. P.W.No.1 was the doctor who had conducted a post mortem on the dead body of Vidya. P.W.No.2 was the father of the deceased Vidya and P.W.Nos. 3 and 4 were neighbours to whom oral dying declaration was said to have been made by Vidya. P.W.No.5 was the mother of Vidya, P.W.No.6 was the witness who was friend of Vidya. P.W.No.7 was the Sarpanch of the village before whom an extra judicial confession was said to have been made by the accused. P.W.No.8 Vilas Bhosale was P.S.I. attached to Lanja Police Station who was the Investigating Officer in the case. The defence did not lead any evidence. But from the 313 Statement, it appears that the defence of the accused was of total denial. After recording the 313 statement and perusing all the materials on record, the Trial Court passed the

impugned Judgment and order acquitting the accused from the charge levelled against him.

4. With the help of the Advocates for the accused and the learned A.P.P. we have perused the entire material on record. It appears that the oral dying declaration given by the deceased to P.W.No.4-Atmaram Powar and P.W.No.3-Satyawati Powar have been disbelieved on the ground that the prosecution has not proved that the deceased died as a result of injuries received by her in the incident. Reliance is placed on the Judgment of the Apex Court reported in **A.I.R. 1964 S.C. Page 900 (Moti Singh and another Vs. The State of Uttar Pradesh)**, where Apex Court held that when the deceased is not proved to have died as a result of the injuries received by her in the incident where the deceased is alleged to have been killed, his statement relating to that incident cannot be said to be the statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. The Trial Court had therefore, observed that considering this legal position and on the basis of the facts of the case, the oral dying declaration said to have been made by P.W.No.4 Atmaram Powar and P.W.No.3 Satyawati Power would carry no evidential

value. He has reached his verdict of acquittal based upon a further finding that the prosecution had failed to prove its story of throwing of the coconut by the accused, the fact that three injections were given by a doctor to deceased Vidya prior to her death, the non examination of the said doctor by the prosecution and the admission of Dr. Jalisatgi (P.W.No.1) to the effect that in case of cardio arrest, one also can find blood clots in the brain. He also relied upon the further admission of the doctor that if the death was due to asphyxia caused by a drug reaction one can expect the presence of haemorrhage on modulla and pons. On this aspect of the matter no fault can be found in the impugned Judgment. The Trial Court has however, wrongly disbelieved the extra judicial confession said to have been made by the accused to the Sarpanch of the Village P.W.No.7 Prabhakar Breed. This extra judicial confession was discarded by stating that it was admitted position that the statement made by an accused before the authorities or Sarpanch could not be admissible. This is no longer the correct position of law. The Apex Court in the case of **A.I.R.1991 Rajasthan Page 45 (Union of India Vs. M/s. J.K. Industries Ltd.)** while considering the scope of Section 25 of the Indian Evidence Act has laid down that unless

an officer is invested with the powers of investigation and the power to submit a report under Section 173 of the Criminal Procedure Code, he cannot be said to be an " Officer" under Section 25 of the Evidence Act. It is not seriously disputed that the Sarpanch has no such power. Sarpanch (P.W.No.7) deposed in his evidence that on 27.9.1986, he learnt that Vidya was seriously injured. He therefore, went to her house with Police Patil. On going there, he found that Vidya was dead. It was 7.p.m. and on making enquiry he learnt that the accused was in village Khor Ninko. He was told by the father of deceased-Vidya that he had made arrangement to call the accused to this village but the persons who had gone to fetch him had returned and stated that the accused did not come with them. P.W. No.7 Prabhakar then went to Village Khor Ninko alongwith 5-6 persons. However, the accused could not be immediately traced. This witness made enquiry with the Sarpanch of the Village Mr. Phansalkar. Ultimately he traced the accused near the house of Stayawati. Accused was then taken to Village Prabhanwali. This witness made enquiry with the accused and accused confessed that he had hit coconut on the head of the deceased. In his cross examination this witness contended that he had gone to the flour mill and he had seen the small pieces

of coconut and one big piece of coconut was also lying there. In our view since the version given by this witness about seeing the coconut is not corroborated by the scene of offence panchanama and since the version must either be accepted or discarded as a whole, not much value be given to this version. In our view, the evidence of P.W.No.3 Satyawati Powar and P.W.No.4 Atmaram Powar which ought to have been relied upon atleast to the extent that accused was beating his wife Vidya. P.W.No.3 Satyawati was the lady in whose house Vidya had gone on the fatal day. In fact, from her house accused had taken Vidya to the flour mill on the pretext of giving her money. Immediately thereafter this witness heard Vidya calling her in loud tone as "Mami" and she rushed towards the flour mill. Her brother-in-law-P.W.No.4 Atmaram Powar also accompanied her. On going there she noticed that Vidya was lying on the flour mill and she sustained injury on her parital region. The accused was present there. This witness asked the accused not to beat Vidya. Her brother-in-law Atmaram Powar brought water and sprinkled the same on the face of Vidya. They then together carried Vidya to Vidya’s house. This evidence is also corroborated by the evidence of P.W.No.4-Atmaram Powar. He stated that in the house Satyawati,

Satyawati told Vidya that accused had not consumed food on the previous night. This was stated in the presence of the accused. Vidya asked the accused as to why he had not consumed food on the previous night. He further stated that Vidya had demanded money for household expenses from the accused. Accused then took Vidya to his flour mill for giving money. This witness then collected his flour from the flour mill and proceeded towards his house. When he had covered the distance of 50-paces, he heard shouts of his sister-in-law Satyawati calling for him. He went to the house of Satyawati and from there they went to the flour mill. They found that Vidya was unconscious and the accused was in angry condition. They requested the accused to cool down and they found that Vidya had sustained an injury on her left parital region. This witness then brought water and sprinkled the same on the face of Vidya. They then took Vidya to the house of Satyawati.

5. The evidence of these two witnesses clearly indicate that Vidya and accused were alone together in the flour mill and within a short time after the accused leaving the house of P.W.No.3-Satyawati with Vidya, Vidya shouted loudly and called for

P.W.No.3-Satyawati. They saw that Vidya was lying in an injured condition. In our view, this evidence which is corroborated by the medical evidence which indicates injuries on the head and chest of the deceased Vidya, were sufficient to prove that accused was the only person who beat Vidya on the day of incident.

6. However, being conscious of the fact that there are certain limitations in the medical evidence led by the prosecution to indicate that the death of Vidya was caused because of the injuries caused on her head, we feel that only conviction possible on the basis of this evidence would be under Section 323 of the Indian Penal Code. It is so because none of the weapons with which injuries were caused have been found or discovered. The doctor had opined that the injury No.1 by itself was simple and there was no corresponding internal injury.

7. The net result is that the appeal is partly allowed. The impugned Judgment and order passed by the Trial Court, acquitting the accused of the charge under Section 302 of the Indian Penal Code is set aside and, for the reasons mentioned in this Judgment, the accused is convicted for the lesser offence punishable under

Section 323 of the Indian Penal Code. The record indicates that the accused was arrested on 29.9.1986 and was released on 15.10.1986. In the circumstances, he is sentenced to suffer imprisonment for the term undergone by him during the trial and also sentenced to pay a fine of Rs.1000/-. In default of payment of fine, he is to suffer further Rigorous Imprisonment for a period of two months.

(S.S.PARKAR, J.)

(R.S. MOHITE, J.)

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Miss. Savita Suryawanshi, Advocate appointed for the Respondent.

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CORAM : S.S.PARKAR &
R.S. MOHITE, JJ.
DATED : 12TH AUGUST,2004.

ORAL JUDGMENT :(PER R.S. MOHITE,J.)

. For the reasons separately recorded in the oral Judgment, this court passed the following order.

OPERATIVE ORDER

. Appeal is partly allowed.

. The impugned Judgment and the order passed by the Trial Court, acquitting the accused of the charge under Section 302 of the Indian Penal Code is set aside and the accused is convicted for the lessor offence punishable under Section 323 of the Indian Penal Code.

He is sentenced to suffer imprisonment for the term undergone by him during the trial and also sentenced to pay a fine of Rs.1000/-. In default of payment of fine, he is to suffer further Rigorous Imprisonment for a period of two months.

(S.S. PARKAR, J.)

(R.S. MOHITE, J.)